

LABOR STANDARDS FILE

For each construction contract, the Grantee should maintain a labor standards file to include the following items. Please check off each of the following items and make sure each item is filed appropriately prior to final monitoring by your State CDBG representative.

- _____ Copy of wage rate decision and notice to proceed from state labor specialist.
- _____ Copy of advertisement for bid.
- _____ Evidence that labor standards provisions were included in bid advertisements.
- _____ Evidence that the HUD 4010 form was used in the specifications and/or contract.
- _____ Evidence of request for contractor eligibility and notice to proceed from state labor specialist.
- _____ Copy of pre-construction conference time, place and attendees.
- _____ Copy of construction contract with federal labor standards attachments.
- _____ Evidence that wage standard and wage rate notices have been posted at the construction site.
- _____ Contractor's weekly payroll (identified as first, second final).
- _____ Interviews with construction workers.
- _____ Evidence of any violations with supporting documentation.
- _____ Evidence of violation resolution.
- _____ Date of construction completion.
- _____ Evidence of close-out, including final inspection by the state and no outstanding unpaid billings.

SECTION H – LABOR

1. OVERVIEW

This section provides an overview of federal laws that govern the wages and working conditions for laborers and mechanics employed under construction contracts funded in whole or in part by State CDBG funds.

Awarding of contracts for construction, alteration or rehabilitation of public works projects, public facilities, and some housing projects are governed laws designed to ensure that:

- a. All contractors pay mechanics and laborers at a rate equal to that paid to those workers on similar activities in the locality. This is known as the "prevailing wage rate,"
- b. Workers be paid at regularly scheduled intervals and only those deductions allowable by law or as authorized by the employee shall be taken out of the worker's gross pay,
- c. All workers receive "overtime" compensation at a rate of one and a half (1.5) times the regular hourly wage for work performed in excess of forty (40) hours per week, and
- d. All workers are assured of safe and healthy working conditions.

2. APPLICABLE LAWS

A. Davis-Bacon and Related Acts (40 USC 276a-7)

Objective -- Ensure that mechanics and laborers employed in construction work under federal contracts and contracts of recipients of federal financial assistance are paid wage rates and fringe benefits equal to those of corresponding classes of workers on similar construction in the locality in which the work is performed.

Key Provisions -- Applicable to all contracts or subcontracts, which exceed \$2,000 for construction, alteration, or rehabilitation. The Division of Community Development will provide rate determinations. Classifications of workers excluded from prevailing wage rates include apprentices registered in a bona fide apprenticeship program, trainees employed under a program approved by the U.S. Department of Labor, or helpers if the helper classification is specified on the request to the Department of Labor for a wage rate determination.

Housing rehabilitation of less than eight units or where less than eight units were bid as a single contract is excluded from Davis-Bacon provisions.

Additional Guidance -- "Labor Standards Provisions Applicable to Contracts Covering Federally-financed and Assisted Construction" (29 CFR 5).

B. Copeland "Anti-Kickback" Act (40 USC 276 (c))

Objective -- Prohibit wage "kickbacks" and salary deductions other than those prescribed by law (e.g., tax withholding and FICA) or those voluntarily authorized by the wage earner.

Key Provisions - Applicable to any federally assisted contract subject to Davis-Bacon wage standards.

Additional Guidance -- "Contractors and Subcontractors on Public Buildings or Public Work Financed in Whole or in Part by Loans or Grants from the United States" (29 CFR 3)

C. Contract Work Hours and Safety Standards Act, as Amended (40 USC 327-332)

Objective -- Ensure that workers on federally assisted construction projects are compensated for overtime and to ensure that safe and healthy working conditions are provided.

Key Provisions -- Applies to all construction contracts over \$2,000. Financial assistance that is in the form of a loan guarantee or loan insurance is exempt from this requirement.

3. EXEMPTIONS FROM LABOR STANDARDS

A jurisdiction is exempt from Labor Standards Provisions when:

A. A lowest responsible bidder has not been found after two successive bid solicitations resulting in no bids being within 10% of the engineers estimate, and it decides to use the jurisdiction's own employees to do the work (FORCE ACCOUNT LABOR); or

B. A lowest responsible bidder has not been found after two successive bid solicitations, and it decides to use donated or volunteer labor drawn from among the jurisdiction's citizenry.

When volunteer labor is to be used and prior to commencement of construction, the jurisdiction must submit to State CDBG Staff the names of all volunteers; the type of work each will perform, i.e., carpenter, cement mason, brick mason, laborer, etc.; and the number of hours each will contribute to the project; and a schedule when each volunteer will be working on the project and the length of time the person will be on the job-site.

C. The eligible activity is single family housing rehabilitation or multi-family housing rehabilitation involving less than 8 units.

4. WAGE RATE DECISION

Request Wage Rate Determination -- Jurisdictions engaging in a construction-type project, must contact State CDBG Staff at the time of preparation for bid solicitation and request the most recent Department of Labor wage rate determination. Advertisements for bid must include language that the project is subject to Federal Labor Standards, Davis-Bacon Provisions, Section 3 and EEO requirements. This General Decision must become part of the project specifications and the contract between the jurisdiction and the general contractor.

Subject to state law, if any city, town, or county estimates the cost of a project to be less than \$25,000, improvements may be made without calling for bids, except procurement for professional services i.e. architect/engineer.

5. GENERAL CONTRACTOR ELIGIBILITY DETERMINATION

Verify Bidder Eligibility -- Prior to awarding any construction contract, the grantee must provide notice to the state CDBG staff of a pending contract and obtain approval of eligibility of the proposed contractor. The U.S. Department of Labor, maintains lists of contractors who have been found in violation of the labor standards requirements and therefore have been debarred, suspended, or otherwise declared ineligible for participation in federally assisted construction projects. The CDBG staff will check the U.S. General Services Administration's "Lists of Parties Excluded from Federal Procurement or Non-procurement Program's". **Publication of Advertisement for Bid** -- Immediately following publication of advertisement for bid that includes language that the project is covered by Federal Labor Standards, **the jurisdiction must send copy of same to the State CDBG office.**

If the selected bidder is determined to be eligible, the state CDBG office will provide the grantee with a notice to proceed with the contract award (**Exhibit H-2**). If the selected bidder appears on the list of ineligible contractors, the CDBG office will provide a notice of ineligibility. At that point the grantee may offer the contract to the first alternate bidder or may reopen the bidding procedures.

6. FORM 4010 – Exhibit H-3

Include all labor standards provisions and certifications in the solicitations for bid documents -- The governing regulations for the applicable laws related to labor standards provides specific language to be included in all solicitations for bids and contracts for projects receiving federal financial assistance (Part I, Financial Management.) Additionally, each bidder and eventual contractor are required to provide specific certifications assuring the Grantee that the bidder and/or contractor will comply with prescribed labor standards requirements. These federal labor standards, federal form 4010, must be included in the contract and/or bid specifications. **This form is to become a part of all construction contracts.** The compliance liability with these applicable laws is then passed on to the contractor. The grantees' responsibility is then reduced to interviews and record- keeping.

7. PRE-CONSTRUCTION CONFERENCES

Instructions related to labor standards in the pre-construction conference --Following the contract award but prior to giving notice to proceed to the contractor, the Grantee must hold a pre-construction conference, and **a member of the state CDBG staff must be asked to attend.**

The main goal is to help the contractor and subcontractors understand what they must do . . .

- To get the funds they have earned released on time and in full;
- To avoid violating labor standards provisions and possible civil or criminal prosecution;
- Sometimes contractors or subcontractors avoid their labor standards responsibilities intentionally. Those who do so risk the consequences of being caught. Your objective; however, is to prevent those violations which result from ignorance or misunderstanding.

In the event published prevailing wage rates do not cover one or more of the crafts identified by the contractor, the grantee and the contractor should use the pre-construction conference to negotiate the lacking wages. Such negotiations should address the following criteria:

- The craft is utilized in the area by the construction industry;
- The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the published wage determination; and
- There is no evidence of agreement on the classification and proposed wage rate among the parties involved -- the contractor(s), employees (if known) or their representative, and the contracting officer/agency. At the conference the grantee should give explicit instructions to the contractor pertaining to notices that must be provided at the construction site and wage reporting requirements.

Forepersons working as journeymen more than 20% of their time on the project must be paid Davis Bacon Wages for their trade.

Notices to be posted at the construction site include:

- Notice to Employees that Project is Subject to Federal Labor Standards.
- Safety and Health Protection on the Job.
- Copy of the Wage Rate Decision.

8. PAYROLL

Proper submittal of weekly payrolls is perhaps the **most important requirement** of CDBG labor standards. It is a requirement to use the payroll form provided in **Exhibit H-5**. A computerized payroll form that contains the same information may be used with permission from the Division of Community Development. Most importantly all payroll forms must be **signed** and submitted **each week!** For permissible payroll deductions see **Exhibit H-6**.

REMEMBER, PAYROLL FORMS MUST BE SUBMITTED WEEKLY FOR ALL CONTRACTORS!!!

HOW TO CORRECT PAYROLL ERRORS

Project manager will notify the contractor by phone or letter if an error is found in the payroll. Adjustments should be made as follows:

- if the gross amount of wages due a workman does not exceed \$10.00, the contractor must pay the money directly to the employee and report the payment on supplemental payroll.
- if the gross amount exceeds \$10.00, then a certified statement from employee showing payment was received or a canceled check with the employees' endorsement must be provided to the project sponsor.

9. MONITORING CONTRACTOR PERFORMANCE

It is the grantee's responsibility to monitor construction contracts to ensure that all required notices are posted prominently at the construction site, that the contractor's weekly wage reports are accurate, and that the contractor is complying with applicable labor standards. While the general contractor is responsible for his sub-contractors, the grantee is ultimately responsible for monitoring of Davis Bacon requirements. This monitoring function can be accomplished through the following activities:

- On-site inspections to ensure that required notices are posted.
- Comparison of weekly payroll reports to the prevailing wage rate decision.
- Interviews with construction employees.

Interviews should be conducted at least once a month with a representative of each classification of laborers and at least 10 percent of the work force.

INVESTIGATION OF LABOR STANDARDS

Violations of labor standards requirements may surface as the result of either monitoring by the grantee or through a specific complaint by a construction worker. In either instance, the grantee is responsible for investigating and documenting the alleged violation.

If a violation is evident, the grantee may work with the contractor on an informal basis to resolve the finding. When the contractor refuses to address the violation or continues to violate the labor standards provision, the grantee should report the violations to the state CDBG staff. The state office then will work with the regional office of the U.S. Department of Labor to determine what actions are required. (The contractor should be informed that an unresolved finding could result in disbarment and make the contractor ineligible for further CDBG or other federally assisted construction projects.)